IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO 138/2000

Oriental Insurance Co. Ltd. ..... Appellants
! through: Mr.L.K.Tyagi, Advocate

VERSUS

$ Smt.Meena Kumari & Ors. ..... Respondents
^ through: Mr.O.P.Goyal with MR.Pradeep Kr. Saini for respondents
Mr.Jyotindra Kumar, Adv. for R-12

FAO 154/2000

Meena Kumari & Ors. ..... Appellants
! through: Mr.O.P.Goyal with Mr.Pradeep Kr. Saini, Advs.

VERSUS

$ Suresh Kumar & Ors. ..... Respondents
^ through: Mr.L.K.Tyagi, Adv. for R-3
Mr.Atul Nigam with Mr.Arabinda Nayak for R-8

RESERVED ON : 08-02-2007

% **D**ATE OF DECISION: 15-02-2007

CORAM:
* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y
2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: PRADEEP NANDRAJOG, J.

1. The 2 captioned appeals arise out of the same accident involving a bus No.DEP-4480 in which the deceased was travelling as a passenger.

2. Deceased, Shri Jai Kishan, who was travelling as a passenger in the bus No.DEP-4480 died when the bus met with a road accident on 1.12.1988.

3. Dependants of the deceased filed a claim petition before the MACT seeking compensation on account of death of the deceased in the said road accident.

4. Defence raised by the insurance company was that the policy issued in respect of bus was a statutory policy and as per Section 95(2) of the Motor Vehicles Act, 1939 as deceased was a passenger in the bus at the time of the accident, its liability under the policy was limited to the extent of Rs.15,000/- only .

5. After considering the evidence on record pertaining to the accident and holding that the accident in question was caused due to rash and negligent driving by the driver of the bus no. DEP-4480, learned Tribunal awarded a compensation of Rs. 4,89,600/- to the dependents of the deceased. Defence of the insurance company that the policy in question was a statutory policy and that its liability under the policy was limited to the

extent of Rs.15,000/- was rejected by the learned Tribunal. The liability of the insurance company under the policy was held to be unlimited.

6. FAO No.138/2000 is an appeal under Section 173, Motor Vehicles Act, 1988 filed by the insurance company challenging the award dated 29.1.2000 insofar it determines that the liability of the insurance company under the policy is unlimited.

7. Learned Counsel for the appellant/insurance company submitted that the Tribunal has erred in not restricting the liability of the insurance company to Rs.15,000/- only.

8. Learned counsel for the appellant relied upon testimony of Bhajan Singh, Asstt. Manager, Oriental Insurance Co., R3W1 in support of his contention that the liability of the insurance company is limited to the extent of Rs.15,000/-.

9. Bhajan Singh, R3W1 produced a photocopy of a cover note (Mark A), policy of insurance (Mark C) and receipt of premium (Mark B) and deposed that the said copies were true copies of the original cover note, receipt and policy respectively issued in respect of bus no. DEP-4480. He also produced a certificate (Ex. R3W1/1) and deposed that said certificate certifies that photocopies of policy and cover note produced by him are true

copies of the original cover note and policy issued by the insurance company in respect of offending bus. He further deposed that the said cover note (Mark A) produced by him shows that the insurance company had charged a premium of Rs. 612/- for 51 passengers i.e. Rs.12/- per passenger. The said witness also produced a copy of the Indian Motor Tariff (Ex. R3W1/2) and deposed that the Tariff shows that premium of Rs.12/- is required to be charged by the Insurance Company to cover the statutory liability of Rs.15,000/- per passenger.

10. Learned counsel for the appellant contended that the Tribunal failed to appreciate the testimony of the Bhajan Singh, R3W1 which according to the learned counsel clearly proved that the policy issued by the insurance company was a statutory policy. He further contended that in absence of any evidence to show that an extra premium was charged by the insurance company to cover risk to a larger extent, the learned Tribunal erred in holding that the liability of the insurance company is unlimited.

11. The question is whether Bhajan Singh, R3W1 successfully proved that the cover note (Mark A) and policy (Mark C)

produced by him are the true copies of the original cover note and policy issued by the insurance company.

12. While dealing with the issue of the liability of the insurance company, learned Tribunal has considered the testimony of Bhajan Singh, R3W1. The reasoning given by the Tribunal in holding that the liability of insurance company is unlimited is as under:

> 'Similarly in the present case, the Insurance Co. has produced only the photocopies of the cover note and insurance policy and they have neither produced the original nor the carbon copy of the office copy which was skept by them but stated that they have been destroyed. Further they did not produce any order regarding the destruction of documents by any officer of the Insurance Co. Therefore, the evidence of the respondent No.3 and 7 regarding their limited liability could not be proved by them. Therefore, this issue is decided against the respondent No.3 and 7 and in favour of the petitioners.'

13. I have perused the testimony of Bhajan Singh, R3W1.

14. Bhajan Singh, R3W1 admitted in cross-examination that said cover note (Mark A) and policy (Mark C) were not prepared by him but were prepared by one Sh. D.K. Gupta, Development Officer who is still working in the insurance company. He further stated that he had no personal knowledge regarding the original cover note and policy issued by the insurance company.

15. I fail to understand as to why Mr D.K. Gupta who had prepared the original cover note and policy was not produced by the insurance company.

16. Bhajan Singh, R3W1 on basis of Indian Motor Tariff (Ex. R3W1/2) had deposed that a premium of Rs.12/- is required to be charged by the Insurance Company to cover the statutory liability of Rs.15,000/- per passenger. But later in cross-examination, he stated that at the time of the issuance of the policy in question, premium payable for issuing the Act only policy was Rs.200/-. He thus contradicted his earlier statement.

17. Cover note (Mark A) produced by Bhajan Singh, R3W1 shows that a premium of Rs. 512/- was charged by the insurance company for 51 passengers i.e. Rs. 12/- per passenger. While policy (Mark C) and receipt of premium (Mark B) produced by the same witness shows that a premium of Rs. 951/- was charged by the insurance company.

18. Certificate (Ex. RW1/1) produced by Bhajan Singh, R3W1 cannot be relied upon for the reason that said certificate was prepared on 12.2.96 i.e. much after the accident in question which took place on 1.12.1988.

19. As regards insurance company's failure to produce original policy and other records pertaining to issue of insurance cover in respect of offending bus, Bhajan Singh, R3W1 deposed that the original records were destroyed. The cover note (Mark A) and the policy (Mark C) produced by R3W1 show that policy in respect of offending bus was issued on 25.8.1988. Accident in question took place on 1.12.1988. Trial Court record shows that the notice was issued to the insurance company on 10.4.89 and it was served before 29.5.89. No satisfactory explanation has been furnished by the appellant as to why the original policy and other records were destroyed within a year of issue of insurance cover.

20. I also note that no notice was served by the insurance company calling upon the owner of the offending bus to produce the original policy.

21. The above circumstances compel me to draw an adverse inference against the insurance company. I am in perfect agreement with the finding of the learned Tribunal that appellant insurance company failed to prove that it's liability under the policy was limited to an extent of Rs.15,000/- only.

22. In the decision reported as *Shyamlal & Ors. V New India Assurance Co. Ltd.,* 1979 ACJ 208 (MP), *National Insurance Co Ltd v Narendra Kumar & Ors.*, 1981 ACJ 93 (All), *Oriental Fire and General Insurance Co. Ltd. v Mrs. Leelavati R. Adyanthaya & Ors.,* 1976 DLT 163 it was opined that if the insurance company fails to prove insurance policy it must be held liable for the full amount irrespective of the Section 95(2) of the Motor Vehicles Act, 1939.

23. In the present case, as the appellant insurance company has failed to prove the insurance policy, I concur with the decision of the learned Tribunal and hold that the liability of the insurance company is unlimited.

24. I therefore dismiss FAO 138/2000.

25. Vide FAO No.154/2000 claimants of the deceased seek enhancement of the compensation.

26. Deceased was employed as a Surveillance Worker in Municipal Corporation of Delhi. The last drawn salary of the deceased was Rs.1752/- per month. Considering that colleagues of the deceased were getting Rs.3144/- per month in the year 1994, Tribunal has taken monthly income of the deceased as Rs.3500/- per month. Deducting 1/3rd towards personal

expenses of the deceased, loss of dependence worked out to the family is Rs.2400/- per month. Multiplier of 17 has been applied noting that the deceased was 34 years of age at the time of the accident. Thus, total loss of dependency to the family assessed by the Tribunal is Rs.4,89,600/-. (2400 x 12 x 17)

27. The only ground raised by the counsel for the claimants is that while determining loss of dependency the Tribunal erred in ignoring the prospects of future increase in the income of the deceased.

28. During the pendency of the claim petition, claimants had filed letter dated 14.5.1998 issued by Dty. Zonal Health Officer, Municipal Corporation of Delhi, the employer of the deceased. The aforenoted letter shows the salary structure of the deceased and that the salary of the deceased at the time of his retirement would have been Rs.7013/- per month.

29. Learned counsel for the claimants contended that ample evidence was produced before the Tribunal to show the salary which the deceased would have drawn from time to time but it was not taken into consideration by the Tribunal while calculating compensation which is contrary to the judgment of

the Supreme Court in the decision reported as AIR 1996 SC 1274 *Sarla Dixit & Anr. Vs. Balwant Yadav & Ors.*

30. The general principle for determining the compensation is that the pecuniary loss to the heirs of the deceased can be ascertained by balancing on the one hand the loss to the claimants of the future pecuniary benefit and on the other any pecuniary advantage which from whatever source comes to them by reason of the death. In other words, balance of loss and gain to a dependent by the death must be ascertained.

31. One of the 2 methods adopted to determine compensation in fatal accident actions is the multiplier method mentioned in *Davies Vs. Powell Duffregn Associated Colliers Ltd.* 1942 AC 601.

32. If the multiplier adopted by the courts is fair, the compensation awarded by way of multiplier method takes care of future prospects. In the instant case Ex.PW5/1, certificate issued by the employer of the deceased shows that the income of the deceased in the month of November,1988 was Rs.1752/-. As the date of accident is 1.12.1988, I take monthly income of the deceased as Rs.1752/-. Considering that the family of the deceased consists of wife, 3 children and parents, I deduct 1/5th on account of personal expenses of the deceased. Thus, loss of

dependency is assessed at Rs.1402/- per month. I increase the same by 10% each year. I note that the deceased was aged 34 years at the time of the accident and had 26 years of service left. I take interest on the capital at 12% p.a. from 1988-96, 10% p.a. for the period 1996-03 and thereafter at 8% for the period 2003-14. Annual interest is shown in column 6. Annual loss of dependency in column 5 and excess/shortfall of interest over annual dependency in column 7. The statement comes to as under :-

1	2	3	4	5	6	7
S.No	Year	Money in Capital A/c	Monthly dependency	Annual dependency (Rs.)	Interest (Rs.)	Excess of interest over dependency (Rs.)
1	1988-89	4,89,600	1402	16824	58752	41928
2	1989-90	5,31,528	1542	18504	63783	45279
3	1990-91	5,76,807	1696	20352	69217	48865
4	1991-92	6,25,672	1866	22392	75081	52689
5	1992-93	6,78,361	2053	24636	81403	56767
6	1993-94	7,35,128	2258	27096	88215	61119
7	1994-95	7,96,248	2484	29808	95550	65742
8	1995-96	8,61,989	2732	32784	103439	70655
9	1996-97	9,32,644	3005	36060	93264	57204
10	1997-98	9,89,848	3306	39672	98985	59313

11	1998-99	10,49,161	3637	43644	104916	61272
12	1999-00	11,10,433	4001	48012	111043	63031
13	2000-01	11,73,465	4401	52812	117346	64534
14	2001-02	12,37,999	4841	58092	123800	65708
15	2002-03	13,03,707	5325	63900	130371	66471
16	2003-04	13,70,178	5858	70296	109614	39318
S.No	Year	Money in Capital A/c	Monthly dependency	Annual dependency (Rs.)	Interest (Rs.)	Excess of interest over dependency (Rs.)
17	2004-05	14,09,496	6444	77328	112760	35432
18	2005-06	14,44,928	7088	85056	115594	30538
19	2006-07	14,75,466	7797	93564	118037	24473
20	2007-08	14,99,939	8577	102924	119995	17071
21	2008-09	15,170,10	9435	113220	121361	8141
22	2009-10	15,25,151	10379	124548	122012	-2536
23	2010-11	15,22,615	11417	137004	121809	-15195
24	2011-12	15,07,421	12559	150708	120594	-30114
25	2012-13	14,77,306	13815	165780	118185	-47595
26	2013-14	14,29,711	15196	182352	114377	-67975

33. A perusal of the table shows that till the 21st year, there is excess of interest over dependency. The excess interest has been capitalized for the next year. After 26 years, a sum of Rs.14,29,711/- is still left in the capital account.

34. As per claimants, loss of dependency at the end of 26 years comes to Rs.7,013/-. Whereas, loss of dependency

assumed by me as per the chart is Rs.15,196/- per month in the 26th year. The table clearly shows that the compensation awarded by way of multiplier method has taken into account future prospects.

35. Even otherwise, learned counsel for the claimants is wrong in contending that the Tribunal ignored the prospects of the future increase in the income of the deceased. The last drawn salary of the deceased was Rs.1752/- per month. Yet taking into consideration that colleagues of the deceased were getting Rs.3144/- in the month of October, 1994 learned Tribunal has taken income of deceased as Rs.3500/- per month for the purposes of calculation of loss of dependency.

36. I find no merit in the contention of the learned counsel for the claimants that the Tribunal had erred in ignoring the future prospects. The table clearly shows that the compensation awarded by the Tribunal for loss of dependency is just, fair and reasonable.

37. FAO No.138/2000 and FAO No.154/2000 are accordingly dismissed.

38. No costs.

FEBRUARY 15, 2007 PRADEEP NANDRAJOG
SL JUDGE